HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

No. W.P. No. 125(S/S) of 2006

Smt. Rakesh Devi & Anr.
Vs.
State of Uttaranchal & others.

Approved for reporting.

Not approved for reporting

Date of decision 14/02/2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 125 (SS) OF 2006

1. Smt. Rakesh Devi, Widow of Deshpal Singh,
2. Bhupendra Kumar, S/o late constable 89 A.P. Deshpal Singh,

Both are resident of Village and Post Barwala, P.S. Ramala, Distt. Bagpat, U.P. .....Petitioners

Versus

1. State of Uttaranchal, through the Secretary, Home Ministry, Civil Secretariat, Dehradun.
2. Director General of Police, Uttaranchal, Dehradun.
3. Superintendent of Police, Haridwar.

.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri C.K. Sharma, learned counsel for the petitioner and learned Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents for appointment under Dying in Harness Rules.

The short submission of the petitioner is that in spite of the fact that he has applied under the Dying in Harness Rule on 12th August, 2003, but the same has not been considered.

According to the case the of the petitioner, the father of the petitioner no. 2 Bhupendra Kumar, who was serving in the District Saharanpur as Constable 89 AP was killed by some unknown person in the midnight of 30.05.1995 while he was on night duty.

Petitioner no. 2 has moved an application for his appointment before the Superintendent of Police, Haridwar under the provision of Dying in Harness Rules on 12th August, 2003, but the same has not yet been considered. The financial condition of the petitioners is also not good inasmuch as only a

sum of Rs. 1,150/- is being paid towards the family pension and there are four other family members.

The formalities of the appointment have already been completed by medically examining petitioner no. 2 on 2nd September, 2003. The respondents, therefore, in such a condition are directed to dispose of the representation of the petitioner in accordance with law after considering the proviso to Rule 5 of the rules framed under Dying in Harness Rules. The same is quoted below:-

"[5. Recruitment of a member of the family of the deceased. *-(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person---*

(i) fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant :

Provided that where the State Government is satisfied that the time-limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider

necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.]

[(3) Each appointment under sub-rule (1) should be under the condition that the person appointed under sub-rule (1) shall upkeep those other family members of the deceased Government servant, who are incapable for their own maintenance and were dependent of the abovesaid deceased Government servant immediately before his death."

So far as the appointment under Dying in Harness is concerned, the Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** The relevant observations are quoted below:-

> "*The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family.*"

In view of the above, the respondents no. 1 and 3, therefore, are directed to dispose of the application of the

petitioner along with the representation within a period of six weeks from the filing of the certified copy of the order.

Writ petition is disposed of accordingly. No order as to costs.

(Rajesh Tandon, J.)

14.02.2006
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